STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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November 20, 1995

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M. Street, NW
Washington, DC 20554

Re: In the Matter of Price Cap Performance Review
<u>for Local Exchange Carriers - CC Docket No. 94-1</u>

Dear Secretary Caton:

Enclosed are an original and nine copies of the comments of the New York State Department of Public Service in the above-referenced proceeding.

Respectfully submitted,

Mary E. Burgess /KAL

Mary E. Burgess
Staff Counsel

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	

COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE ON THE
ORDER INVITING COMMENTS

INTRODUCTION

The New York State Department of Public Service (NYDPS) submits these comments in response to the Commission's Second Further Notice of Proposed Rulemaking inviting comments regarding the price cap performance review for local exchange carriers (LECs). In general, the NYDPS endorses initiatives that promote competition and reduce regulatory oversight when competitive market conditions effectively substitute for regulation. We believe, however, that it could be detrimental to the public interest to grant LECs interstate access pricing flexibility based only on the presence of competition in the local exchange market, without also examining access competition. Our comments address 1) our concerns about the relationship between reduced interstate access regulation and the behavior of the local access marketplace, and 2) our experience with the Rochester Open Market Plan.

I. RELAXED REGULATORY TREATMENT

The Commission seeks comment on whether it should predicate granting the LECs relaxed regulatory treatment of interstate services on a demonstration that certain barriers to competitive entry into local markets have been removed. The NYDPS agrees that removing barriers to local competition is an important first step to creating an environment in which local competition can develop and serve the public interest. In New York, due to Public Service Commission policies, the barriers to local exchange competition are being eliminated. To date thirty-six non-LEC carriers have been certified to provide local service in New York, including AT&T, MCI, Time Warner, and Southwestern Bell Communications. Six of these carriers have signed interconnection agreements, several have been issued NXX's, and there are over twenty collocation sites in New York wire centers. Nevertheless, actual competition is still in its early stages. Consequently, removing barriers to competition will not always lead to immediate competition, and evidence of facilities-based competition is a more realistic gauge for changes in regulatory oversight.

Regarding the Commission's proposal for relaxed regulatory treatment, while there may be a linkage between relaxed regulation of LEC interstate access services and the degree of local exchange competition, that linkage, in itself, is not sufficient to introduce pricing flexibility, particularly upward flexibility.

Pricing flexibility and relaxed regulation of a particular service should be associated with the level of competition for that service. This is the standard for pricing flexibility included in both the House and Senate bills. Both bills require the FCC and the States to allow incumbent local exchange carriers pricing flexibility for services subject to competition.[1]

In this case, interstate access service competition, in addition to local exchange competition, should be examined before granting the LECs pricing flexibility and relaxed regulation of their interstate access services. Even in the case of local service competition, it is reasonable to expect that each end user will continue to subscribe to only one provider of local service. Thus, interexchange carriers will still be forced to originate and terminate interstate toll calls using the interstate access services of the sole local exchange carrier to whom the end user subscribes. This situational monopoly will not provide the market constraints on a LEC's interstate access prices necessary to justify relaxing regulation of those services. While some interexchange carriers may elect to bundle local and toll services through their own local loop facilities or by resale (thereby providing their own access services), this would serve only to substitute one interstate access monopolist for another.

Thus, the Commission's emphasis should be on determining whether there is competition in interstate access services as well as in the local exchange market before granting

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[1] Section 248(a)(4), S. 652 (House bill); Section 301(a)(1) (Senate bill).

pricing flexibility and relaxed regulation of LEC interstate access services.

Should the Commission nonetheless elect to grant the LECs pricing flexibility for interstate access services based on the level of local service competition, the NYDPS believes that the states are best positioned to determine when those local markets are competitive. Electing to go with a uniform national standard for local competition, as the Commission seems to suggest in the Notice, is inappropriate since market conditions among states, and within a state, can vary significantly. Instead, the Commission should collaborate with the states, relying on the states' knowledge of local markets, to determine when those markets are competitive.

II. ROCHESTER'S OPEN MARKET MODEL

The Commission seeks comment on the application of the Rochester "Open Market" Plan as a model for triggering relaxed regulation of interstate access services. In particular, the Commission is interested in whether the wholesale/retail structure embodied in the Plan would constitute an appropriate condition to warrant relaxed interstate access regulation. While the Rochester plan established a model organization for facilitating local access competition, it may not be appropriate for purposes of granting access pricing flexibility, for the reasons discussed in the previous section. Despite the removal of barriers to competition, Rochester's wholesale rates for interexchange access continue to be subject to rate regulation with a maximum price cap on intrastate rates.

Moreover, competition is just beginning to emerge in the Rochester arena. Nine months after the plan was implemented there are fewer than 100 customers (out of 513,000) subscribing to the facilities-based competitor. In addition, the four resellers have enrolled approximately 20,000 subscribers. This is not surprising, because history has taught us that when the barriers to competitive provision of telecommunications services, such as terminal equipment or interexchange toll, were removed, it took considerable time for viable competition to emerge in these markets.

CONCLUSION

The NYDPS supports the use of incentives such as pricing flexibility to encourage one establishement of open entry policies. As part of this approach, we believe that granting relaxed regulatory treatment for a specific service should be predicated on marketplace competition for that service, replacing the functions performed by regulatory oversight. Competition in

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the interstate access market as well as local competition should be the criterion for relaxing the regulation of interstate access services.

Respectfully submitted,

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Dated: November 20, 1995
Albany, New York